In the present case the property was not produced before the Court. It was very wrongly disposed of by the authorities before the case came for hearing, and I think it is stretching the section too far if one says that because a person refuses to sell one tin his whole stock has been used for the commission of an offence or that an offence has been committed regarding it.

Conviction Quashed.

T. M. R. SAMI v. SIM TENG CHEW.

[Appellate Juris. (Murray-Aynsley, C.J.) June 17, 1947]

Crown Lands Encroachments Ordinance — Unlawful occupation of Crown Land — Whether service of a notice is necessary before steps could be taken for removal of trespasser — Crown Lands Rules, 1923, Rule 30.

In this case the appellant was summoned for being in unlawful occupation of Crown Land. It appeared that a temporary occupation licence covering the land in question had been issued to one Veerapathram but that later this Veerapathram had parted with his interest in the land to the appellant. The temporary occupation licence issued to Veerapathram had expired. The question was whether steps could be taken for the removal of the appellant without service of a notice under rule 30 of the Crown lands Rules 1923.

Held, (1) that Rule 30 of the Crown Lands Rules 1923 could only be applied to the licensee himself and his servants and agents but not to assignees, who, the licence being not assignable, were trespassers, (2) that in this case on the facts the licensee had parted with his interest to the land to the appellant and no notice under Rule 30 of the Crown Lands Rules was necessary.

APPEAL from Police Court.

S. C. Goho for the Appellant.

C. H. Butterfield (D. P. P.) for the Respondent.

Murray-Aynsley, C. J. : — In this case the appellant was summoned for being in unlawful occupation of Crown land.

It appears that a temporary occupation licence had been issued to one Veerapathram and it had expired.

The question to be decided was whether steps could be taken for the removal of the appellant without service of a notice under rule 30 of the Crown Lands Rules, 1923.

It appears that Veerapathram had carried on a business on the premises in question but before these proceedings were taken he had assigned the business to the defendant. He had further given a power of attorney to the appellant. It was contended that as such attorney of Veerapathram he was entitled to the protection given by r. 30. It was contended as a matter of fact that Veerapathram had continued to reside on the premises.

I cannot find an express finding of fact by the Magistrate on this point, but I think it must be inferred from statements made by the appellant to officers of the Land Office that this was not the case.

The construction of rule 30 is not without difficulty. If it were construed quite literally, it would mean that once a temporary occupation licence had been granted no trespasser on the land in question could be removed unless the required notice were served on him. "Any person" must therefore be given a restrictive interpretation, that is, primarily to that of the licensee himself, but it would also include his servants and agents. On the other hand a purported assignee is not an agent of the assignor, and if anyone held land as assignee, as the licence is not assignable, he would be a mere trespasser.

The question there is to decide is whether in point of fact the relation of principal and agent existed between Veerapathram and the appellant. It appears to be clear from the evidence that Veerapathram had parted with all his interest in the premises and that the appellant was in no sense his agent. The power of attorney was obviously a mere device to assign the licence, which both parties knew could not be done. It follows, therefore, that the appellant was not entitled to the protection of Rule 30, and the appeal must be dismissed.

Appeal Dismissed.

STRAITS SETTLEMENTS REPORTS.

MOHAMED FAHMY v. HAPPY WORLD LTD.

[Appellate Civil Jurisdiction (Trusted C.J., F.M.S., Aitken Ag. J.A. and Worley, J.) January 7, 1942]

Courts Ordinance, Section 24 — Functions of a Court of Appeal — Credibility of witness — Appeal.

This was an appeal from the decision of the learned Chief Justice of the Straits Settlements dismissing the claim of the appellant in this case for damages for breach of contract. On the hearing of the appeal counsel for the appellant and for the respondents addressed the Court on the functions of a Court of Appeal,

Held, (1) that where the credibility of a witness's oral testimony is concerned, the Court of Appeal will be slow to differ from the trial Judge, unless it appears that his view of that testimony was contrary to facts as to which there could be no doubt; (2) that where however it is clear that the trial Judge believed or disbelieved a witness, not because of the impression which that witness made upon him when giving his evidence, but because of inferences which the Judge drew from other circumstances, the Court of Appeal is in as good a position to draw those inferences as was the trial Judge, and it is its duty to consider them; (3) that in this case the learned Chief Justice had decided the case upon the impression which the witnesses made upon him when they gave their oral evidence and that therefore the Court of Appeal should not interfere with the decision.

CIVIL APPEAL.

Dato Roland Braddell for the Appellant.

E. R. Koek for the Respondent.

Trusted, C. J. :—In this appeal both learned counsel addressed us on the functions of a Court of Appeal. They did not refer to section 24 of the Courts Ordinance, but it would appear therefrom that the functions of this Court are similar to those of the Court of Appeal in England. I do not think there is any real doubt as to the position, although there are a number of authorities in which the members of the House of Lords, the Privy Council, the Court of Appeal in England, and this Court have expressed their views.

I think it is clear that where the credibility of a witness's oral testimony is concerned, the Court of Appeal will be slow to differ from the trial Judge, unless it appears that his view of that testimony was contrary to facts as to which there could be no doubt. Where, however, it is clear that the trial Judge believed or disbelieved a witness, not because of the impression which that witness made upon him when giving his evidence, but because of inferences which the Judge drew from other circumstances, the Court of Appeal is in as good a position to draw those inferences as was the trial Judge, and it is its duty to consider them.

In the present case the appellant, as plaintiff in the action, sued the respondents for damages for breach of contract. The appellant is a professional boxer of standing, and the respondents are professional entertainers who, inter alia, promote and stage boxing contests.

It was not disputed that, by a contract contained in certain telegrams, the respondents agreed to give the appellant two fights in Singapore for each of which he was to receive $1,000; that one fight took place in accordance with the contract, but that the other has not taken place. The Plaintiff's claim was for damages because he was not given the second fight.

The appellant gave evidence that he saw Mr. See, the Manager of the Happy World, and Mr. Lee who was also interested in the boxing at the Happy World, and asked them about his second fight. In cross-examination he denied that he was offered a fight with another boxer named Frisco. He also stated that he wrote three letters, copies of which he produced, one addressed to Mr. See and the others to the Happy World, in which he complained that he had not been given his fight. To these, he said, he received no answer. I will refer to them again. Later he wrote a fourth letter which he sent by registered post, to which the respondents replied asking him to come and see them.

The respondents called Mr. See, Mr. Lee, and a Mr. Campbell, and the effect of their evidence was that at an interview early in September they offered the plaintiff a fight with Frisco, but that the plaintiff refused the fight, demanding other terms than those agreed. They stated that there was a second interview a day or two later, when the plaintiff again refused and said something to the effect "I owe no fight, you owe no fight".

The whole case turns upon the question, which of these stories should be believed? The learned Chief Justice who tried the case rejected the plaintiff's case, and found for the defendants. We are concerned to see whether in doing so he acted upon his impression of the witnesses or how far he was influenced by other circumstances from which we could equally well draw inferences.

Reverting to the three letters which the plaintiff stated he wrote, it is clear from his evidence that he specifically stated that he posted each of them. But the defendants denied their receipt. As to this the Chief Justice says "I am not satisfied that any of these letters was in fact posted to or received by the defendant". That can only mean that he disbelieved the plaintiff and regarded him as an individual who was seeking to support his case by copies of letters which had not been posted.

As to the evidence of the crucial interview, the Chief Justice says :—

> I see no reason why the defendants should not have offered a fight with Frisco if he was available. The defendants would expect to make a profit out of such a fight, not merely from the charges to enter the stadium where the fight was to take place, but from the extra money that would be received to enter the Happy World premises and some at least of the spectators at the fight would be expected to patronise the cabaret and the bar. It was therefore in the defendant's interest that the fight should take place.

That is an inference which is, perhaps, open to argument. The Chief Justice also admitted the evidence of a Mr. Brewer, as to which he said :—

> Mr. Brewer who was in 1940 President of the Boxing Board of Control, witnessed the contest between Fahmy and Sabatino on 31st August. About two weeks later he saw Mr. Lee and asked about his next boxing event. Mr. Lee told him he had intended putting up Fahmy $1,000 but the latter demanded $1,500 or 35%. Fahmy was not present at this conversation.
>
> I accept Mr. Brewer's evidence. It proves this and no more than this that the story the defendants told in the witness box in July is the same story as they told in the middle of the previous September.

I should have doubted the admissibility of this evidence, but if admitted, it cannot do more than corroborate to a limited extent the story of Mr. Lee.

As to the plaintiff, the Chief Justice said :—

> I think that the whole trouble is due to these facts: the plaintiff knew Frisco was paid on a percentage basis; he imagined that defendants' profits to be very much greater than they were; and he had succeeded without great difficulty in extracting substantial compensation for the week's delay when his first fight was postponed. He therefore thought that if he demanded more he would get it.

Whether he was right in so thinking again may be open to argument. As to the case as a whole the Chief Justice said :—

> The plaintiff is very positive that he was never offered this fight, but I am satisfied that he was offered the fight;

and later :—

> I find it impossible to believe that the defendants broke the contract. Apart from this evidence that it was the plaintiff who broke it, it was to their interest to try and get some return for the expense which they had incurred in bringing the plaintiff to Singapore. A second fight would probably have made some profit though not so large a profit as the plaintiff seemed to think; so why should the defendants not provide that fight?

I think, particularly having regard to the finding as to the letters, that the Chief Justice must have decided the case upon the impression which the witnesses made upon him.

Much argument was directed to showing that Frisco was not willing or available to fight at the material time; but it does not seem to me that that necessarily carries the matter any further. When they made their offer to the plaintiff, the respondents might have hoped that they could make arrangements with Frisco, and as to this the Chief Justice said :—

> But the plaintiff does not say that he was offered a fight with Frisco which for some reason or other the defendants were unable to stage. If that was his story it would carry more weight.

In the result I think that the Chief Justice decided this case upon the impression which the witnesses made upon him when they gave their oral evidence; and that being so, I do not think that we shall interfere; and the appeal should be dismissed.

Aitken, J. A. : — I concur, and have nothing to add.

Worley, J. : — I also concur and have nothing to add.

Appeal Dismissed.

F. M. S. REPORTS.

KUPPUSAMY vs. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Murray-Aynsley, J.) Sept. 26, 1941]

Discharge of accused not amounting to an acquittal —Criminal Procedure Code (Cap. 6), sections 171, 173, 254 and 302 (v).

Proceedings had been instituted upon the complaint of a person under section 133 of the Criminal Procedure Code (Cap. 6) against the appellant. The complainant appeared at the hearing and asked for an adjournment. The Magistrate discharged the appellant but directed that the discharge should not amount to an acquittal. Against this order the appellant appealed.

Held, that except in cases coming within the special order under section 254 of the Criminal Procedure Code (Cap. 6) a Magistrate cannot acquit an accused person until the evidence for the prosecution has been heard.

Appeal from an order of the Magistrate at Tapah.

Cases referred to :—

(1) *Abdullah v. Public Prosecutor* [1933-1934] F.M.S.L.R. 360.

(2) *Regina v. Monterio* 4 Ky. 556.

Mahendran for appellant :—

The refusal of the complainant to proceed with her case coupled with the absence of her witnesses, if any, and who further had not been subpoenaed empowered the Magistrate to dismiss the charge against the appellant. By such dismissal the complainant would be deprived of any right to proceed against the defendants on the same charge. See **Abdullah v. Public Prosecutor**(1), **Regina v. Monterio**(2). The order of the Magistrate which was "discharge not amounting to an acquittal" is not recognised by any of the relevant sections of the Criminal Procedure Code and was therefore "**ultra vires**".

Russell, Deputy Public Prosecutor, for respondent.

Cur. Adv. Vult.

Murray-Aynsley, J. : — In this case the complainant was not ready with her evidence and asked for an adjournment.

The Magistrate made an order that the defendants should be discharged "without amounting to an acquittal".

Against this order one of the defendants appeals. It is contended on his behalf that he should be acquitted. It seems that a Magistrate may in a case make the following orders (a) he may find the person guilty; (b) he may acquit the accused; (c) he may discharge the accused; or (d) in cases under section 254 order a discharge amounting to an acquittal. The present case does not come under section 254.

By section 302 (v) the dismissal of a complaint or the discharge of the accused is not an acquittal for the purposes of this section.

Section 254 (ii) provides such discharge shall not amount to an acquittal unless the Court so directs, except in cases coming under section 171. Such discharge means, however, discharge under section 254. Therefore for a discharge to amount to an acquittal without a special order of the Magistrate it must fall within the provisions of section 254 as well as of section 171.